

THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL
GREGORY H. SMITH



ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
ANNE R. CLARKE
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
PETER W. MOSSEAU
BETSY S. WESTGATE
EDWARD L. CROSS, JR.
PETER C. SCOTT
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT
ROBERT P. CHENEY, JR.
LESLIE J. LUDTKE
ANDREW L. ISAAC
RONALD F. RODGERS
G. DANA BISBEE
PETER T. FOLEY
STEVEN M. HOURAN
JEFFREY R. HOWARD
EVE H. OYER
GREGORY W. SWOPE

ATTORNEYS
DANIEL J. MULLEN
JAMES D. CAHILL, III
EDNA M. CONWAY
AMY L. IGNATIUS
T. DAVID FLOURDE

September 29, 1983

Mr. Kenneth Fortier, President
Board of Pharmacy
Hazen Drive
Concord, New Hampshire 03301

Dear Mr. Fortier:

By memo dated August 18, 1983, the Board requested that we review the apparent conflict between HB 425, Chapter 129 of the Laws of 1983, authorizing advanced registered nurse practitioners (ARNPs) to prescribe medications in certain circumstances, and RSA 318:1, XIII, the definition of "prescription" as used in the statutes governing the practice of pharmacy and sale of drugs. Your specific question appears to be whether a pharmacist would be in violation of the law if he sold a medication prescribed by an ARNP. It is our opinion that a pharmacist would not be in violation of the law if he sold a medication prescribed by an ARNP which is from the formulary agreed upon by the board of registration in medicine and the board of nursing education and nurse registration.

Chapter 129 of the Laws of 1983, effective August 6, 1983, amended RSA 326-B:10, II to read as follows:

"An A.R.N.P. who functions in connection with protocols established jointly with a collaborative physician may prescribe medications from the formulary for a specialty area which has been jointly agreed upon by the board of registration in medicine and the board of nursing education and nurse registration. The formulary shall



be kept on file with the boards of nursing and medicine and shall be reviewed and updated annually. The A.R.N.P. shall file with the board of nursing a current number issued by the federal Drug Enforcement Agency (DEA) and the collaborative physician's name and DEA number. The A.R.N.P.'s name, specialty area, and DEA number, the collaborative physician's name and DEA number, and the formulary shall be distributed to each licensed pharmacy in the state."

The language of this statute clearly shows that it was the legislature's intent to give an ARNP the right to prescribe medications from an agreed-upon formulary. The only question is whether a pharmacist may sell a medication that is so prescribed.

RSA 318:1, XIII defines "prescription" as:

"a verbal or written order for drugs, medicines and devices by a legally competent practitioner of medicine, dentistry, or veterinary medicine, to be compounded and dispensed by registered pharmacist in a duly registered pharmacy, and to be kept on file for a period of two years. Prescriptions may also apply to the finished products dispensed by the registered pharmacist in the registered pharmacy, on order of a legally competent practitioner as previously defined."

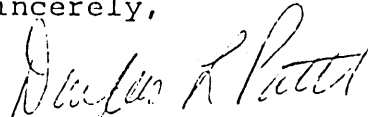
Since this statute was not amended by Chapter 129, the term "prescription" as used in RSA 318 does not include an ARNP as a person authorized to prescribe drugs or medicines. It should also be noted that throughout RSA 318 the references to "the written prescription of a duly licensed physician, dentist, or veterinary" were not amended by Chapter 129.

In light of the clear legislative intent of Chapter 129, however, we see no basis for interpreting any provisions of RSA 318 to prohibit a pharmacist from selling or dispensing a medication prescribed by an ARNP. To interpret Chapter 129 to allow ARNPs to prescribe certain medications but at the same time to prohibit pharmacists from selling or dispensing those medications would produce an absurd or illogical result, contrary to the principles of statutory construction. Doe v. State, 114 N.H. 714 (1974). Moreover, such an interpretation would in effect frustrate or nullify the clear intent of Chapter 129.

State v. Kay, 115 N.H. 696 (1975). Finally, since Chapter 129 is clearly the most recent act of the legislature on this subject, if there is any conflict between this and a statute enacted at an earlier date, the later enactment should control even though the former was not repealed. Ingersoll v. Williams, 118 N.H. 135 (1978).

I trust this has answered your questions. Please let me know if you require anything further.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

DLP:ab
#83-120-I